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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,768	01/31/2001	Dror Segal	070388.0620	5534

21003 7590 03/02/2012

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EXAMINER	
ROSEN, ELIZABETH H	

ART UNIT	PAPER NUMBER
3694	

NOTIFICATION DATE	DELIVERY MODE
03/02/2012	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DROR SEGAL, ANNE E. ALLEN,
and MARK HICKS

Appeal 2010-005059
Application 09/774,768
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1 to 7, 11 to 17, and 23. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

Claim 1 is illustrative:

> 1. A method for managing trading and system activity in a trading exchange, the method comprising:
>
> at a centralized location, providing a visual display of trading exchange activity including systems activity and trading activity to a trading exchange supervisor or manager; and
>
> providing an interactive decision support interface coupled to the visual display of trading exchange activity,
>
> wherein providing the visual display of trading exchange activity comprises:
>
> maintaining data representing a three dimensional model of said exchange's trading areas, said model including surfaces;
>
> receiving and maintaining in a computer memory data representing trading exchange activity;
>
> generating a two dimensional display representing an aspect view of said three dimensional model selected via the interactive decision support interface, said two dimensional display including perspective views of at least some of said surfaces of said model;
>
> generating alphanumeric images of selected data representing trading exchange activity; and
>
> mapping said alphanumeric images onto selected ones of said perspective views.

Appellants appeal the following rejections:

1. Claims 1 to 7, 11 to 17, and 23 under 35 U.S.C. § 103(a) as unpatentable over Ivy Schmerken, *Real Liffe or virtual reality*, 15 Wall Street & Tech., 1-3 (Jan. 1997) (hereinafter "Schmerken") in view of Dean Tomasula, *Virtual trading is virtually a reality*, 13 Wall Street & Tech., 1-4 (Oct. 1995) (hereinafter "Tomasula").
2. Claims 8 to 10 and 18 to 22 under 35 U.S.C. § 103(a) as unpatentable over Schmerken in view of Tomasula and further in view of Marshall (US 5,675,746, iss. Oct. 7, 1997).

ANALYSIS

The Appellants argue that the prior art does not disclose providing a visual display of trading exchange activity including *systems activity* and trading activity.

According the Appellants' Specification, system activity relates to the state of the server, host connectivity and floor connectivity (Spec. 16). We agree with the Appellants that Schmerken does not disclose a virtual display of trading exchange activity including system activity. We find that Schmerken discloses a display of a trading floor but discloses nothing about viewing system activity (p. 2). Likewise, we find that Tomasula discloses a virtual trading floor that integrates a group of traders by audio, video, and data communications into a single unit so that each trader can be located in a different city and still interact with his fellow trader as if they were all on the same floor (p. 2).

Tomasula does not disclose a visual display of systems activity. Even the Examiner recognizes that this subject matter is not disclosed in the

prior art (Ans. 5). The Examiner found the Appellants' own Specification identified the need to manage systems activity (Ans. 20-21), but identifying such a need is not necessarily an admission of prior art, and in any event does not in itself show the predictability of the solution claimed. Therefore, we will not sustain the Examiner's rejection of claim 1 and claims 2, 3, 4, 7, and 23 dependent thereon. We will also not sustain the rejection as it is directed to claims 5 and 11 and claims 6, 8, 9, 10, 12, 13, and 14 dependent thereon because claims 5 and 11 recite a visual display of trading exchange including systems activity.

Claim 15 does not claim a visual display of trading exchange activity including system activity. We are not persuaded of error on the part of the Examiner by Appellants' argument that Schmerken teaches away from the user of virtual reality for trading. A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out the reference, or would be led in a direction divergent from the path that was taken by the applicant. *See U.S. v. Adams*, 383 U.S. 39, 52, 86 S. Ct. 708, 714, 15 L.Ed.2d 572 (1966). While the Appellants are correct that the disclosure in Schmerken states that the Exchange does not intend to use the virtual technology for the purpose of trading, the paragraph that follows this disclosure states that the future of virtual trading could be just around the corner (p. 2). In any case, there is nothing in Schmerken that would discourage one from using the virtual technology disclosed in Schmerken for virtual trading.

We are not persuaded of error on the part of the Examiner by Appellants' argument that the prior art does not disclose a virtual display of systems activity, trading exchange supervision, ability to pinpoint complex

systems and stock related activity with visual clarity because these features are not recited in claim 15. Therefore, we will sustain the Examiner's rejection of claim 15. We will also sustain the Examiner's rejection of claims 16 to 22 because the Appellants have not argued the separate patentability of these claims.

DECISION

We reverse the Examiner's rejection as it is directed to claims 1 to 14 and 23. We affirm the Examiner's rejection of claims 15 to 22.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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